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BARNOW AND ASSOCIATES

a professional corporation

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January 8, 2016

Via CM/ECF

The Honorable Charles R. Brever United States District Court Northern District of California Courtroom 6 – 17th Floor 450 Golden Gate Avenue San Francisco, CA 94102

> Re: In Re: Volkswagen "Clean Diesel" Mktg., Sales Practices, and Products Liab. Litig., MDL No. 2672 CRB (JSC), Leadership Application of Ben Barnow This Document Relates to All Actions

Dear Judge Breyer:

Please accept this letter and the accompanying resume and list of supporting counsel as my application for appointment as one of lead counsel or, alternatively, to the Plaintiffs' Steering Committee responsible for representing the interests of car owners and lessees of the concerned vehicles. I believe my varied 46-year legal career and record of successfully resolving complex class actions makes me well-qualified to serve in a leadership position. My legal practice initially focused on corporate counseling and defense litigation and included acting as General Counsel for the world's largest public relations agency for a significant number of years. Since 1992 beginning with the Chicago Flood Litigation—my practice has concentrated in class action litigation.

I have served as a court-appointed lead, co-lead, or equivalent designation in over thirtyfive class actions that were successfully resolved through class-wide settlement. Many of these cases were resolved through the MDL process, whereas other matters involving numerous filings, such as the America Online Access Litigation, were successfully resolved without MDL activity through discussions and agreements with other counsel. The following cases demonstrate my proven ability to lead and successfully resolve large-scale MDL matters, such as this case.

As a member of the Plaintiffs' Steering Committee ("PSC") in the Sony Gaming Networks and Customer Data Security Breach Litigation (MDL 2258), an MDL involving over 60 cases, I played a pivotal role in litigating the case and negotiating a settlement along with my colleagues Paul J. Geller, Timothy G. Blood, and the other members of the PSC. At the final fairness hearing, the Honorable Anthony J. Battaglia remarked: "Just in the final analysis, the order, much like all the work by both sides throughout the case, has been impeccable, highly professional, and skilled. It has been a real pleasure dealing with you." (Hon. Anthony J.

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Battaglia, United States District Court, Southern District of California, Courtroom 3B, 221 West Broadway, Ste. 3142, San Diego, CA 92101, Tel: (619) 557-3446)).

I spent several years as a co-lead counsel in the Arkansas, Kansas, South Dakota, and Wisconsin Microsoft civil antitrust cases. Each of these complex cases settled. In the Wisconsin matter, my co-counsel and I successfully petitioned the Wisconsin Supreme Court to recognize the rights of indirect purchasers to recover under Wisconsin's antitrust laws (*Olstad v. Microsoft Corp.*, 700 N.W.2d 139 (Wis. 2005)), prior to reaching a settlement valued at approximately \$224 million. I was also appointed by the Honorable J. Fredrick Motz to the nine-member Plaintiffs' Executive Committee in the *Microsoft Civil Antitrust Litigation* (MDL 1332). (Hon. Richard J. Sankowitz (Wisconsin), Circuit Court Judge, Milwaukee County Circuit Court, 901 N. 9th St., Room 104, Milwaukee, WI 53533, Tel: (414) 278-4490; Hon. J. Fredrick Motz (MDL), United States District Court, District of Maryland, 101 W. Lombard Street, Baltimore, MD 21201, Tel: (410) 962-2600; Hon. Alice Gray (Arkansas), Circuit Court Judge, Circuit Court of Pulaski County, Arkansas, 401 W. Markham, Rm. 350, Little Rock, AR 72201 Tel: (501) 340-8530; Justice Lori S. Wilbur, South Dakota Supreme Court, 500 E. Capitol Ave., Pierre, SD 57501, Tel: (605) 773-3511).

I served as a co-lead counsel in *Palace v. DaimlerChrysler Corp.*, relating to DaimlerChrysler Corporation's alleged sale of Neon model vehicles containing defective head gaskets. The Honorable Julia M. Nowicki (Ret.) certified a litigated class of Illinois consumers, and the Honorable Mary Anne Mason denied a motion for decertification of the Illinois Class and granted final approval of a settlement reached through mediation with the Honorable Stephen A. Schiller (Ret.) of JAMS. (Hon. Julia M. Nowicki (Ret.) and Hon. Stephen A Schiller (Ret.), JAMS, 71 S. Wacker Drive, Ste. 3090, Chicago, IL 60606, Tel: (312) 655-0555; Hon. Mary Anne Mason, Appellate Judge, Illinois Appellate Court, First District, 160 North LaSalle Street, Chicago, IL 60601, Tel: (312) 793-5484).

I also served as a co-lead counsel in *In re TJX Retail Security Breach Litigation* (MDL No. 1838), and *In re Countrywide Fin. Corp. Customer Data Sec. Breach Litigation* (MDL No. 1998); data breach MDL matters which settled. The Honorable William G. Young, who presided over *TJX*, praised the settlement reached as "excellent," "innovative," and "groundbreaking." Additionally, in granting final approval of the *Countrywide* settlement, the Honorable Thomas B. Russell remarked that "Co-Lead Settlement Counsel are nationally recognized in the field of class actions" and that "the Court was impressed with Co-Lead Counsel and Countrywide counsels' knowledge and skill, as represented in the various motions and hearings that took place throughout this settlement process." (Hon. William G. Young, United States District Court, District of Massachusetts, John Joseph Moakley U.S. Courthouse, 1 Courthouse Way, Ste. 2300, Boston, MA 02210, Tel: (617) 748-9156; Hon. Thomas B. Russell, United States District Court, Western District of Kentucky, Gene Snyder U.S. Courthouse, 601 W. Broadway, Louisville, KY 40202, Tel: (502) 625-3680).

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I served as a co-lead counsel in Schulte v. Fifth Third Bank, before the Honorable Robert M. Dow, Jr., relating to allegations that the defendant unlawfully re-sequenced debit card transactions in order to maximize overdraft fees. In that role, I negotiated a settlement providing for a \$9.5 million settlement fund and injunctive relief valued at approximately \$108.3 million over ten years. (Hon. Robert M. Dow, Jr., United States District Court, Northern District of Illinois, Everett McKinley Dirksen U.S. Courthouse, 219 S. Dearborn Street, Chicago, IL 60604, Tel: (312) 435-5665).

I currently serve as a co-lead counsel for the indirect purchaser plaintiffs in Fond du Lac Bumper Exchange, Inc. v. Jui Li Enterprise Co., Ltd. (lead case), before the Honorable Lynn S. Adelman, involving allegations that certain Taiwanese companies conspired to artificially inflate the prices of aftermarket sheet metal auto parts sold in the United States. On December 30, 2015, I filed a motion for final approval of two class action settlements with three of the defendants. The settlements were mediated with the Honorable Martin Quinn (Ret.) of JAMS. (Hon. Lynn Adelman, United States District Court, Eastern District of Wisconsin, 517 E. Wisconsin Ave., Room 364, Milwaukee, WI 53202, Tel: (414) 297-1285; Hon. Martin Quinn (Ret.), JAMS, Two Embarcadero Ctr., Ste. 1500, San Francisco, CA 94111, Tel: (415) 982-5267).

In addition to the numerous appointments I have received, my experience and abilities as a respected plaintiff's class action counsel have been recognized by the industry media. I was featured as a "Titan Of The Plaintiffs Bar" in an October 2014 Law360 article. See Sindhu Sundar, Titan of the Plaintiffs Bar: Ben Barnow, Law360 (Oct. 8, 2014), http://www.law360.com/articles/585655/titan-of-the-plaintiffs-bar-ben-barnow (last visited Jan. 8, 2016).

I am ready, willing, and able to commit the resources necessary to lead the prosecution of this litigation. That is documented by my litigation history.

My history also demonstrates that I have the willingness and ability to work cooperatively with other plaintiffs' counsel and defense counsel. The list of firms with which I have served in a leadership capacity is long and comprehensive. And there are few major defense firms that have not defended clients in one or more class action cases where I have served in a leadership capacity.

Respectfully submitted.

s/ Ben Barnow

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